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Received Law Dept

FEB 16 2018 10:52am
 Accepted Service at CNA
 Jonathan Jackson

Received Law Dept.

FEB 16 2018

MONTANA FOURTH JUDICIAL DISTRICT COURT,
 MISSOULA COUNTY

<p>ROBERT BRAACH and BRAACH ACCOUNTING SERVICES, P.C.,</p> <p>Plaintiff,</p> <p>vs.</p> <p>CNA INSURANCE, a/k/a CONTINENTAL CASUALTY INSURANCE COMPANY</p> <p>Defendant.</p>	<p>CAUSE NO. DV-17-981 Dept. 1 Leslie Halligan</p> <p>SUMMONS (CNA)</p>
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THE STATE OF MONTANA TO THE ABOVE-NAMED DEFENDANTS,
 GREETINGS:

CNA INSURANCE, a/k/a CONTINENTAL CASUALTY INSURANCE
 COMPANY

You, the Defendant, are hereby summoned to answer the Amended
 Complaint in this action by appearing and filing your answer in the District Court

within twenty-one (21) days after the service of the Summons and copy of the Complaint, exclusive of the day of service. You are further required to serve a copy of your answer upon Josh Van de Wetering of Van de Wetering Law Offices, P.C. attorney for the Plaintiff.

In case you fail to appear or answer, Plaintiff may take Judgment against you by default for the relief demanded in the Complaint.

WITNESS, my hand and the seal of this Court this 15th day of February,

2017.

CLERK OF THE DISTRICT COURT
Shirley E. Faust

By: 

Deputy Clerk

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10 ATTORNEY FOR PLAINTIFF

FILED SEP 29 2017

SHIRLEY E. FAULT, CLERK
By [Signature] Deputy

11 IN THE FOURTH JUDICIAL DISTRICT COURT
12 STATE OF MONTANA, MISSOULA COUNTY

13 ROBERT BRAACH, and BRAACH)
14 ACCOUNTING SERVICES, P.C.)

15 Plaintiffs,)

16 -vs-)

17 CNA Insurance, a/k/a CONTINENTAL)
18 CASUALTY COMPANY,)

19 Defendant.)
20

Cause No. DV-17-981

Dept. 1

Leslie Halligan

21 COMPLAINT AND DEMAND FOR
22 JURY TRIAL

23 THE PARTIES

- 24 1. Robert Braach is a man living in Missoula, Montana, where he has lived for
25 decades and where he has also done business.
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COMPLAINT AND DEMAND FOR JURY TRIAL

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- 1 2. Braach Accounting Services, P.C. was an accounting business located in
2 Missoula and doing business until 2015. It was solely owned by Plaintiff
3 Robert Braach.
4
- 5 3. CNA Insurance is corporation headquartered in Chicago, Illinois, doing
6 business across the United States, including in Montana. It sells insurance
7 products under a variety of business names, including Continental Casualty
8 Company.
9

10 JURISDICTION AND VENUE

- 11
- 12 4. The District Court has jurisdiction over this action pursuant to MCA §§ 3-5-
13 302 and 7-32-2109(a). Venue is appropriate in this Court pursuant to MCA
14 § 25-2-126 since Mr. Braach lives in Missoula County and most of the
15 witnesses are in Missoula County.
16

17 FACTS

- 18
- 19 5. In June 2007 Robert Braach purchased professional liability insurance from
20 CNA for his accounting practice, Braach Accounting Services.
21
- 22 6. The policy covered among other things, errors or omissions Mr. Braach or his
23 employees might have made during the course of their professional work, and
24 provided that CNA would defend against law suits against Mr. Braach, his
25 employees, Braach Accounting might face as a result of their professional
26 work.
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COMPLAINT AND DEMAND FOR JURY TRIAL

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1 7. Mr. Braach purchased the policy through a marketing effort CNA undertook
2 with a professional organization to which Mr. Braach belonged, the American
3 Institute of Certified Public Accountants (AICPA).
4

5 8. At the time Mr. Braach had a number of clients, but far and way his biggest
6 was Mr. Steven Sann and Mr. Sann's various companies. Those companies
7 were engaged in providing add-on telecommunications services for telephone
8 customers around the country, and found its customers through internet
9

10 marketing. Mr. Braach and Braach Accounting provided back office
11 accounting, business management and advising, and regulatory compliance
12 services on a flat-fee contractual basis to Mr. Sann and his companies. He
13 was not part of Mr. Sann's business operations, and did not share in their
14 profits or losses.
15

16 9. In January 2013 Mr. Braach was sued by the Federal Trade Commission
17 (FTC) in a suit related to work Mr. Braach did for his largest client, Steve
18 Sann and Mr. Sann's various corporations. The suit alleged that Mr. Sann's
19 companies, as well as Mr. Sann and Mr. Braach personally, as well as Braach
20 Accounting had committed fraud and unfair trade practices, and sought an
21 injunction in addition to approximately 70 million dollars in damages.
22

23 10. The policy purchased in 2007 was still in effect, so Mr. Braach immediately
24 notified CNA of the suit and sought both a defense and indemnification if
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COMPLAINT AND DEMAND FOR JURY TRIAL

1 necessary. In the meantime, Mr. Braach retained private counsel to respond
2 to the suit.

3
4 11. A number of weeks later Mr. Braach received notice from CNA that his
5 claim was being rejected, both for defense and for indemnification. The
6 company stated as its reasons that the 70 million the FTC sought was not
7 “damages” since it sought in its suit “disgorgement” of monies gained; that
8 Braach Accounting, in performing work for Mr. Sann, was not engaged in
9

10 “public accountancy” as required by the policy, and therefore neither Mr.
11 Braach nor Braach Accounting were covered; and that the policy did not
12 cover fraud or other criminal acts.
13

14
15 12. Mr. Braach’s counsel responded with a letter pointing out that the fraud
16 allegations were merely allegations, and therefore a defense at least was
17 necessary under the policy terms; that by the policy’s language it covered
18 “monetary judgments, awards, and settlements” and a claim for
19 “disgorgement” of assets, if at all successful would result in a “monetary
20 judgment, award or settlement;” and finally that the State of Montana
21 accepted the AICPA definition of “public accountancy” as all services,
22 “performed by a member for a client...requiring accountancy or related
23 skills, accounting, audit and other attest services, tax, bookkeeping,
24 management consulting, financial management, corporate governance,
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1 personal financial planning, business valuation, litigation support,
2 educational, and those services for which standards are promulgated by
3 bodies designated by council.” AICPA Code of Professional Conduct
4

5 The definition is broad and includes the work done by Mr. Braach and
6 Braach Accounting. The policy provides no definition for “public
7 accountancy”.
8

9 13. CNA responded by continuing to deny the claim, and by cancelling the

10 policy.
11

12 14. After some negotiation CNA agreed to defend the lawsuit, but continued to
13 maintain that they were not obligated under the policy to indemnify.
14

15 15. In September 2013 the suit was stayed when Mr. Sann was charged
16 criminally for his conduct outlined in the lawsuit. Mr. Braach was not
17 charge with any crimes. CNA agreed to continue to defend until the stay
18 was lifted, at which time they said they would revisit the decision to defend.
19

20 16. By October of 2016, the stay having been lifted, Mr. Braach, through
21 counsel, and the FTC were in serious settlement talks. Counsel for Mr.
22 Braach then contacted CNA to once again seek coverage and to invite them
23 to participate in the negotiation process. CNA reiterated its position that it
24 would not cover any settlement, and added that it also would no longer
25 defend.
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COMPLAINT AND DEMAND FOR JURY TRIAL

1 17. Mr. Braach did settle with the FTC for \$75,000, with the agreement being
2 accepted by the Court in January 2017. By the terms of the settlement Mr.
3 Braach did not admit any wrong-doing.
4

5 18. In settling, Mr. Braach was forced to remove money from his retirement
6 account, at considerable tax loss, and loss of investment gains that have
7 since transpired in the market.
8

9 **COUNT I – UDJA**

10 1. Plaintiff realleges and restates all of the allegations contained in the preceding
11 paragraphs.
12

13 2. Montana law provides that a court of record may declare that an insurer must
14 defend and indemnify under the terms of an insurance contract. MCA 8-27-
15 201. The court may issue the declaration either before or after a breach of
16 contract. MCA 27-8-203.
17

18 3. Mr. Braach and Braach Accounting had an insurance policy issued by CNA
19 which provided indemnification for errors or omissions arising in the course
20 of its work, up to one million dollars, including settlements reached with
21 entities claiming errors or omissions. It also guaranteed to defend against
22 accusations made against Mr. Braach or Braach Accounting and its
23 employees arising from its work.
24

25 4. Just such a claim was made against Mr. Braach and Braach Accounting by the
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COMPLAINT AND DEMAND FOR JURY TRIAL

1 FTC. Mr. Braach reached settlement on the claim.

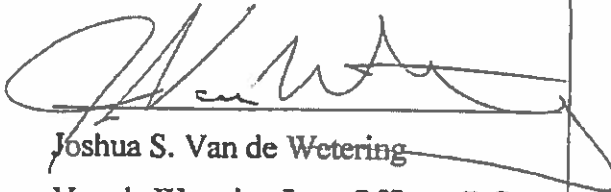
- 2 5. No policy exclusions apply to the situation. CNA was therefore obligated
3 under the terms of its policy to pay the full costs of defending the lawsuit and
4 to cover the amount of the settlement.
5
6 6. CNA did not pay the full costs of the defense of the lawsuit (though it paid
7 some), and did not indemnify Mr. Braach for the settlement. It is therefore is
8 violation of the UDJA.
9

- 10
11 7. CNA's failure was made in bad faith.
12

13 WHEREFORE Plaintiff prays for relief as follows:
14

- 15 1. Damages in an amount to be proven at trial;
16
17 2. Reasonable attorney's fees and costs;
18
19 3. Costs of the suit; and
20
21 4. Such other relief that this Court may deem just.

22 DATED this 29th day of September, 2017.

23 
24 Joshua S. Van de Wetering
25 Van de Wetering Law Offices, P.C.
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COMPLAINT AND DEMAND FOR JURY TRIAL

DEMAND FOR JURY TRIAL

COMES NOW the Plaintiff and demands a jury trial on all issues of fact in
the above case.

DATED this 29th day of September, 2017.



Joshua S. Van de Wetering

Van de Wetering Law Offices, P.C.

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